HON'BLE SRI JUSTICE D.S.R. VARMA

AND

HON'BLE SRI JUSTICE G. BHAVANI PRASAD

W.P. No.7139 of 1996

Between:

Ungarala Syamasundara Rao … Petitioner

and

T. Krishna Vasudevan (died) and 4 others … Respondents

DATE: 20-09-2006

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ORDER (Per G. Bhavani Prasad, J)

This writ petition is filed challenging the judgment of the Special Court under Andhra Pradesh Land Grabbing (Prohibition) Act (for short "the Special Court") in L.G.A. No.7 of 1995, dated 28-11-1995.

The factual background is that the writ petitioner filed O.S. No.66 of 1988 for a permanent injunction against one O.A. Mohammed and Mangu Venkata Ranganadham claiming to be in possession of the subject property under an agreement of sale dated 05-01-1970 under which he paid an advance of Rs.150/-. His suit was transferred to the District Court, Srikakulam for being tried along with O.P. No.47 of 1989 filed by O.A. Mohammed as the general power of attorney holder of T. Krishnan Vasudevan claiming Vasudevan to be the purchaser of the subject property from the original owners in possession and the writ petitioner to be a land grabber, who trespassed into the land and consequently, seeking his eviction from the property.

Both the matters were tried together by the District Court, Srikakulam and after examining P.Ws.1 to 3 and R.Ws.1 and 2 and marking Exs.A.1 to A.3 and B.1 to B.4, the District Court rendered its common judgment on 22-02-1994 dismissing both the cases on the ground that the petitioner in O.P. No.47 of 1989 should have filed a suit for declaration of his title and recovery of

possession, while the writ petitioner should have filed a suit for specific performance and consequential injunction.

Aggrieved by the same, the general power of attorney holder of Vasudevan filed L.G.A. No.7 of 1995 before the Special Court and during the pendency of the appeal, appellants 2 and 3 were brought on record on the death of Vasudevan. The Special Court in the impugned judgment found that on the findings of fact arrived by the District Court, O.P. No.47 of 1989 should have been allowed. The Special Court concluded that in the light of the finding that EX.B.1 agreement of sale in favour of the writ petitioner was not proved and in the face of Ex.A.2 registered sale deed dated 12-03-1971 in favour of Vasudevan, it is clear that Vasudevan is entitled to evict the writ petitioner and get possession.

Aggrieved by the same, the present writ petition is filed contending that while the sale deed was not proved by examining any person connected with the same and its execution was denied by the vendor of the appellant, it could not have been accepted as proving the title of Vasudevan, and the possession of the writ petitioner corroborated by Ex.B.1 agreement of sale and Exs.B.2 to B.4 municipal tax receipts should have been relied on as proving the adverse possession of the writ petitioner. The writ petitioner, therefore, sought for quashing the impugned judgment and decree of the Special Court.

Sri Parabrahmma Sastry, learned counsel for the writ petitioner has strenuously contended that in the light of the anterior agreement of sale in favour of the writ petitioner followed by acts of possession corroborated by Exs.B.2 to B.4, the subsequent

sale deed not proved before the Court by the evidence of either Vasudevan or scribe and attestors of the sale deed, should not have been preferred. The learned counsel contended that Vasudevan himself had no interest in the subject property and it is the general power of attorney who is pursuing the litigation without any right or proof.

Sri M. Gunneswara Rao, learned counsel for the respondents has defended the judgment of the Special Court as being based on the concurrent findings of fact by the District and Special Courts. The learned counsel argued that in the absence of proof of Ex.B.1 agreement of sale and in the light of the acceptability of Ex.A.2 sale deed, there could have been no other conclusion except ordering eviction of the writ petitioner from the subject land.

We have given our anxious consideration to the submissions of the learned counsel for both parties and perused the record.

That the subject property did not belong to the vendor of the writ petitioner alone but was the joint property of 13 persons, is not seriously in dispute and if so, how any agreement of sale by one of the co-owners can validly convey any right or interest, is open to question. Under the agreement of sale, only a part of consideration was paid and no attempt was claimed to have been made at any point of time either to pay the balance of consideration or to demand execution of a regular registered sale deed by the vendor by way of any oral or written demands. Admittedly, no suit for specific performance was filed by the writ petitioner and his only claim to resist eviction from the subject

property is under Section 53-A of the Transfer of Property Act. In the trial before the District Court, neither the scribe nor the attestors of Ex.B.1 were examined, nor was any attempt made to bring the vendor of the writ petitioner into the witness box. The judgment in O.S. No.66 of 1988 and the findings on which the said judgment is based, have become final in the absence of any challenge by the writ petitioner by way of an appeal or otherwise. The findings *inter partes* estop the writ petitioner from raising any contrary pleas in O.P. No.47 of 1989 as well, on the basis of principles of constructive *res judicata* and if those findings are staring at him, probably it is not open to the writ petitioner to fall back upon either the genuineness of Ex.B.1 sale agreement or the lawful nature of his consequential possession. Any claims to prescription of title by adverse possession cannot be considered proved by Exs.B.2 to B.4, which were just prior to the litigation, and when Vasudevan's sale deed was admitted by all the original owners in his favour reciting delivery of possession to him, his claims cannot be brushed aside. Though it is true that Vasudevan himself did not go into the witness box, nothing prevents the power of attorney holder from deposing before the Court to the extent of facts within his knowledge and non-examination of Vasudevan cannot lead to any adverse inference sufficient to displace the positive evidence on record. While the question of burden of proof loses its relevance when once the evidence of both parties is before the Court, the claims of Vasudevan are also corroborated by examining two neighbours about the manner in which he came into possession of the subject property. Apart from his own interested testimony, the writ petitioner's version before the trial

Court was attempted to be corroborated only by R.W.2, who was found by the trial Court to have not established to have any property in the vicinity of the subject property and to be, therefore, not reliable. The findings of fact of the District Judge were in effect and substance affirmed by the Special Court, which only drew necessary inferences from those facts as indicating the entitlement of Vasudevan to get the writ petitioner evicted from the property, and when the Special Act provides a specific remedy to the victims of land grabbing, it is but not called for to refer the aggrieved to regular civil suit again. The question of title could have been gone into in the proceedings under the Special Act itself and they were rightly so gone into and decided on merits. The conclusions of the Special Court, therefore, cannot be considered to be unreasonable or perverse, warranting interference by this Court in exercise of its extraordinary equitable jurisdiction under Article 226 of the Constitution of India.

Therefore, the writ petition is dismissed without costs.

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D.S.R. VARMA, J

Date 20-09-2006

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G. BHAVANI PRASAD, J

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